

In re) Fair Hearing No. 20,926
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Appeal of)

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying her request for prior authorization under the Vermont Health Access Program (VHAP) for coverage of a panniculectomy. The issue is whether the petitioner meets the criteria for a panniculectomy under current regulations. The decision is based upon the testimonial evidence and exhibits adduced at hearing.

3. On or about April 19, 2007, Dr. D.L. submitted a request for prior approval of a panniculectomy, which is the

surgical excision of superficial abdominal fat often left after gastric bypass surgery.

4. Dr. D.L. noted in his request the following information from his April 11, 2007 examination of petitioner and decision-making:

The patient has a very significant panniculus which extends down over her pubic region.

In the subpannicular area, the patient has mild evidence of skin irritation.

I continue to believe that the patient is a candidate for an abdominoplasty in conjunction with a repair of her umbilical hernia.

5. The request for prior authorization was reviewed by J.A., OVHA nurse case manager. J.A. based his recommendation that the panniculectomy was not medically necessary upon the medical documents submitted on behalf of the petitioner including photographs taken on April 11, 2007 by Dr. D.L.'s staff. J.A. has not physically examined petitioner. J.A. found that the photographs did not show the panniculus to hang below the pubis and found that the medical reports did not document non-healing rashes that persisted after aggressive care for at least three to six months. J.A.'s decision was reviewed by Dr. S.S. who confirmed his recommendation.

6. A Notice of Decision denying the request for prior authorization was sent on or about April 30, 2007. Petitioner requested a fair hearing on or about June 22, 2007.

7. A hearing commenced on August 23, 2007. Petitioner appeared *pro se* and brought in an August 17, 2007 progress note from M.D., a nurse practitioner who provides petitioner's primary care. The progress note stated:

Recurrence of chronic rash in lower abdominal crease despite keeping clean and dry. Area gets red, tender & "smelly". . .

Rash recurrent for at least 7 years. Cont. to recur despite her wt. loss. Wt is stable at 160#. Walks 40"[minutes] 4-5x a week. Plus is biking.

Red rash . . . Is "leissing".

Prescribed nystatin 60 mg.

Dr. S.S., then OVHA medical director, explained the criteria and why the medical documentation OVHA received did not meet the guidelines for prior authorization. The progress note was sent to OVHA for review and copies of the pictures were to be provided petitioner.

8. The record was initially kept open for several months to allow petitioner to seek additional evidence and, then representation. Petitioner did obtain representation.

9. Petitioner supplemented the record with the following information:

(1) August 30, 2007 Letter from Nurse Practitioner N.P. supporting petitioner's request so that she can "continue to improve her health through rigorous exercise". N.P. reported that petitioner described that the pannus interfered with hygiene, toileting and exercise and that petitioner described chronic rashes including bleeding open fissures at times.

(2) A new set of photographs.

(3) Letter dated January 24, 2008 from M.D. indicating that the pannus hung unevenly with the left side below the pubis and indicating recurrent rashes in the pannus fold that are controlled by nystatin.

10. Efforts were made for OVHA staff to speak with petitioner's medical providers. These efforts were unsuccessful except for J.A. who spoke to Dr. D.L.. According to J.A., Dr. D.L. explained he did not know about the rashes.

11. OVHA continued to deny the prior authorization after review of the materials based on a new set of photographs that did not show the pannus hanging below the pubis and based on the lack of evidence of non-healing rashes after aggressive treatment. A hearing was held on February 14, 2008.

12. Petitioner testified that she has a rash at all times. The rash sometimes includes open lesions that bleed.

The petitioner testified that the rash is painful and interferes with activities such as walking, going up steps, carrying grocery bags, and bending over. Petitioner blow dries the area several times per day and uses nystatin up to four times per day. Petitioner has not been prescribed other medications nor has she gone to a dermatologist for a consultation. Petitioner has not tried supported undergarments. Petitioner believes that supported undergarments would be uncomfortable based on a conversation she had with D.W.

Petitioner does not believe that the most recent photographs are accurate because she believes the use of spa panties and how she was positioned pushed her pannus upwards.

13. M.D. testified that her most recent examination of petitioner's rash was January 10, 2008. She described the rash as red and irritated on both sides of the crease but more on the right side. The rash was approximately 5 to 8 cm. long; the rash was not open or infected. There is a risk of infection if a rash does not heal. M.D. has pursued conservative treatment with petitioner through the use of nystatin and advice to keep the area clean. M.D. was unable to say that nystatin is the most aggressive treatment for petitioner's rash and would defer to a dermatologist.

M.D. examined the pannus. She put her finger on the pubic bone and the pannus hung below her finger approximately one inch on the left side.

14. Dr. E.C.R., OVHA medical director, testified that neither set of photographs showed the pannus below the pubis. She indicated that there was not sufficient evidence that an aggressive regimen had been tried to control the rash or that supportive undergarments were used. Dr. said that aggressive treatment would include a dermatological consult to determine the cause of the rash and use of multiple regimens to control the rash.

ORDER

OVHA's decision to deny prior authorization for a panniculectomy is affirmed.

REASONS

OVHA has set out procedures to review prior authorization requests for surgery to ensure the appropriate use of resources. M106. OVHA reviews applications for prior authorization to determine whether the requested services are "medically necessary". M106.3. Fair Hearing Nos. 19,072 and 20,387.

Ordinarily, panniculectomies are not covered because they are considered cosmetic surgery. M615. However, there are circumstances in which OVHA will approve prior authorization requests. OVHA has developed the following criteria for prior authorization of panniculectomies:

- A. OVHA will approve all medically necessary panniculectomies by the PA process.
- B. Panniculectomies are medically necessary when:
 - a. The panniculus hangs below the level of the pubis **AND**
 - b. Non-healing rashes, infections, or non-healing ulcers persist despite aggressive treatment for at least three months to six months. OR
 - c. There is difficulty with ambulation and interference with ADLS.
 - d. If the patient had a significant weight loss, the individual must be at stable weight for over 6 months.
 - e. If the weight loss is as a result of bariatric surgery, the patient must be at least 18 months post-op.
- C. Documentation of the above conditions must be included with the PA request.

Based on the above criteria, petitioner needs to demonstrate or provide sufficient evidence that her panniculus hangs below the pubis **and** one additional ground.

OVHA examined two sets of photographs. Although the photographs show the panniculus hanging over the pubis or

covering the pubis, the photographs do not show the panniculus hanging below the pubis. The words "over" and "below" are not synonymous.

Petitioner provided additional testimony from M.D. who examined petitioner in January 2008 and found that one side of petitioner's panniculus hung below her pubis. Even assuming that this evidence is sufficient to meet the first criteria, petitioner has not provided evidence that she meets the other criteria.

Petitioner has been treated for skin rashes for seven years. The testimony of M.D., her treating nurse practitioner, indicates that the rash is controlled through the use of nystatin. M.D. characterized the use of nystatin as conservative. M.D. did not provide evidence of infections or non-healing ulcers. In addition, the medical records document petitioner's walking, biking and other physical activity.

Petitioner did not sustain the burden of proof of showing by a preponderance of evidence that she met the criteria for prior authorization. There is no doubt that petitioner's condition makes her uncomfortable. The regulatory grounds for medical necessity are more than discomfort. If petitioner's condition changes or if there is

new evidence that petitioner has tried aggressive treatment for her rash to no avail, petitioner can reapply for prior authorization for the panniculectomy.

In light of the above, OVHA's decision that petitioner's request does not meet the requirements for prior authorization is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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